UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TIFFANY BROWN,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION H-15-2847
	§	
HARRIS COUNTY HOUSING AUTHORITY,	§	
TOM MCCASLAND, HORACE ALLISON,	§	
DEBRA MCCRAY AND BEVERLY BURROUGHS,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Pending before the court is a memorandum and recommendation ("M&R") filed by Magistrate Judge Nancy Johnson. Dkt. 95. The M&R recommends granting defendants Harris County Housing Authority ("HCHA") and Horace Allison's (collectively, "Defendants") amended motion for summary judgment (Dkt. 74). *Id.* Plaintiff Tiffany Brown objected. Dkt. 96. Defendants responded. Dkt. 97. Having reviewed the M&R, the objections, the response, the record, and the applicable law, the court is of the opinion that the objections should be OVERRULED and the M&R should be ADOPTED IN FULL.

I. BACKGROUND

In this housing voucher case, Brown sued Defendants for violations of the Fair Housing Act ("FHA"), the Rehabilitation Act, and 42 U.S.C. § 1983. Dkt. 1 at 1–2, 11–13. Since 2008, Brown has participated in HCHA's Housing Choice Voucher ("HCV") program to subsidize the cost of housing herself and her children. Dkt. 1 at 6. At first, HCHA gave Brown a two-bedroom voucher. *Id.* Then, HCHA granted Brown's request for a three-bedroom voucher to accommodate her sons' disabilities. Dkts. 76-1 at 1, 76-3 at 1–2, 76-4. HCHA told Brown that it would need to recertify

that accommodation annually. Dkt. 76-4. Later, it granted two other accommodations, allowing Brown to: (1) rent from her mother; (2) at 110 percent of fair market value. Dkt. 76-8 at 1.

In August 2013, Brown met with HCHA employee Sherika Mayweather during the recertification process. Dkts. 76-10, 77-1. Mayweather was "disrespectful" and "mocked" Brown's disabilities and her children's disabilities. *Id.* Mayweather told Brown that HCHA would reduce her voucher from three to two bedrooms. *Id.* She also told Brown that HCHA would cut off all housing assistance if Brown did not accept the reduced voucher. *Id.* After, Brown complained to HCHA. Dkt. 76-36. She also filed a disability and gender discrimination complaint with the Department of Housing and Urban Development ("HUD"). Dkt. 76-11.

In September 2013, HCHA denied Brown's previously requested accommodations. Dkt. 76-12. HCHA told Brown that it needed proof that: (1) her sons were disabled under federal or state law; (2) based on those disabilities, her sons needed an extra bedroom; and (3) her requests were reasonable. *Id.*

In November 2013, Fatimah Escobar, a licensed professional counselor and Brown's medical expert, informed HCHA that she was treating Brown for anxiety, depression, and a panic disorder. Dkts. 77-2, 77-3. In January 2014, HCHA told Brown that Escobar did not provide the requested information. Dkt. 76-13. It also told Brown that she needed to terminate her lease to continue receiving housing assistance. *Id.*

In October 2014, HUD found that HCHA did not discriminate against Brown. Dkt. 76-4. Brown appealed. Dkt. 76-20. After, Brown asked HCHA for an informal hearing. Dkt. 76-15. There, HCHA denied Brown's request to rent from her mother because she did not connect her disability to that accommodation request. Dkt. 76-16. But, HCHA told her she might still qualify for a three-bedroom voucher at 110 percent of fair market value. *Id.* In April 2015, HCHA upheld

its decision to terminate Brown's voucher because she did not attend an appointment or comply with HCHA's requirements. DKT. 76-1, 76-20.

In June 2015, HUD reversed its earlier decision, determining that HCHA needed to give Brown the requested accommodations. Dkt. 76-20. Through discovery, HCHA learned that Brown did not report all of her income as required by its HCV program. Dkts. 77-1, 77-4. Brown continues to receive vouchers and uses that assistance to rent a home from her mother. Dkt. 77-1.

HCHA moved for summary judgment on grounds that: (1) Brown lacks standing; (2) Brown cannot make a prima facie case of discrimination; (3) HCHA did not retaliate against Brown; and that (4) Brown cannot show damages. Dkt. 76 at 10,19. The M&R recommended granting HCHA's motion. Dkt. 95 at 1. Now, Brown asks the court to reject the M&R and deny Defendants' motion. Dkt. 96 at 7.

II. LEGAL STANDARD

A. Magistrate Judge

For dispositive matters, the court "determine[s] de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). "The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." *Id.*

B. Motion for Summary Judgment

A court shall grant summary judgment if a "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed R. Civ. P. 56(a). "[A] fact is genuinely in dispute only if a reasonable jury could return a verdict for the nonmoving party." *Fordoche, Inc. v. Texaco, Inc.*, 463 F.3d 388, 392 (5th Cir. 2006). The moving party bears the initial burden on demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552 (1986). If the moving party

meets its burden, the burden shifts to the non-moving party to set forth specific facts showing a genuine issue for trial. Fed R. Civ. P. 56(e). The court must view the evidence in the light most favorable to the non-movant and draw all justifiable inferences in favor of the non-movant. *Envtl. Conservation Org. v. City of Dallas*, 529 F.3d 519, 524 (5th Cir. 2008).

III. OBJECTIONS

Brown filed four objections. Dkt. 96. First, Brown objects to what she construes as the use of acquired evidence to evaluate her discrimination claims. *Id.* at 1. Second, Brown objects to "the Court's finding that HCHA was entitled to review an accommodation after it had been granted, specifically the accommodation allowing [Brown] to rent from her mother." *Id.* at 2. Third, Brown "objects to the Court's finding that [her] disability claims under the FHA and Rehabilitation Act must fail." *Id.* at 3. And fourth, Brown "objects to the Court's finding that HCHA has articulated legitimate, non-discriminatory reasons for denying [her] requested accommodation and terminating her voucher for non-compliance with HCHA's requirements." *Id.* at 5.

1. After-acquired evidence

Although HCHA provided other reasons for terminating Brown's housing assistance, it also argued that after-acquired evidence authorized its decision. Dkt. 67 at 49; *see infra* Section III(4). In particular, HCHA argued that during discovery, it learned that Brown "purposefully underreport[ed] her income" which it deemed as fraudulent conduct justifying its decision. Dkt. 67 at 49. The M&R squarely rejected that argument. Dkt. 95 at 22 ("[T]he after-acquired evidence does not preclude [Brown] from bringing discrimination claims under the FHA and Rehabilitation Act . . . ."). Nevertheless, Brown "objects to the Court's finding that she committed any fraudulent conduct or that she is ineligible for housing assistance." Dkt. 96 at 1. The M&R did not make either

of those findings. *See* Dkt. 95 at 19–22. Thus Brown's first objection is irrelevant and it is OVERRULED.

2. HCHA's authority to review accommodations

Next, Brown challenges the M&R's determination that HCHA could review accommodations after granting them. Dkt. 96 at 2. Brown argues that for housing assistance, 24 C.F.R. § 982.306(d)'s "prohibition on renting from a family member" does not apply "if the public housing authority [("PHA")] determines that approving the unit would provide reasonable accommodations for a family member who is a person with disabilities."[1] *Id.* at 3. Further, Brown argues that "the exception applies to [her] situation" because "after the family initially received tenant-based assistance for [her] mother's house, the restriction no longer applied . . . and the question of her continuing eligibility for disability-related accommodations became moot." *Id.*

The M&R concluded that the cited regulation "does not prevent HCHA from recertifying [Brown's] continued eligibility for disability-related accommodations." Dkt. 95 at 25; *see also id.* at 24 ("[n]otably, this regulation does not state that HCHA may never review a . . . requested accommodation."). HCHA's plan requires a nexus "between the disability and the requested accommodation." *Id.* at 24. It also requires participants with non-readily apparent disabilities to provide evidence of those disabilities. *Id.* The M&R also pointed to HCHA's determination that

[1]That regulation provides:

> The PHA must not prove a unit if the owner is the parent . . . of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities. This restriction . . . only applies at the time a family initially receives tenant-based assistance . . . but does not apply to PHA approval of a new tenancy with continued tenant-based assistance in the same unit.

24 C.F.R. § 982.306(d).

"no evidence in [Brown's] file support[ed] the accommodations she had previously requested." *Id.* For those reasons, the M&R determined that it was reasonable for HCHA to ask Brown for information supporting her request for accommodations. *Id.*

Brown's objection mischaracterizes the issue. Specifically, Brown conflates recertification for disability-related accommodations and past approval to rent from a family member. Brown argues that once the latter occurred, HCHA lost authority to do the former. *See* Dkt. 96 at 3. Beyond citing to the regulation, Brown provided no authority to support that contention. *See id.* Yet, nothing in the regulation strips HCHA of its recertification authority. Additionally, even if the court agreed with Brown's interpretation, HCHA would still have authority to recertify accommodations for the three-bedroom voucher and the above-fair-market rental rate. *Compare* 24 C.F.R. § 982.306(d), *with* Dkt. 76-1 at 1 (three-bedroom voucher), *and* Dkt. 76-3 at 1–2 (renting at 110% the fair market rate), *and* Dkt. 76-8 (renting from mother). For these reasons, Brown's objection is OVERRULED.

3. Disability discrimination

Brown's third objection challenges several parts of the M&R's disability discrimination analysis. *See* Dkt. 96 at 3. She objects to the M&R's determination that she "cannot raise a fact issue demonstrating that she was either disabled or that renting from her mother was a reasonable accommodation for that disability." *Id.* Brown contends that Defendants "do not claim . . . that [she] cannot raise a fact issue that she is disabled . . . [rather] they assume without conceding that she is disabled." *Id.*

In addition, Brown challenges the M&R's accuracy: (1) for "incorrectly stat[ing] that the recertification in 2013 was the first time [Brown] claimed she was disabled"[2] and (2) that Escobar "filled out a form stating that [Brown] has a physical or mental impairment" under the FHA and the Rehabilitation Act even though "the Court assert[ed] that Escobar stated that Brown was not a person with physical or mental impairments as defined by the HUD, the FHA, or the Rehabilitation Act." *Id.* at 3–4.

Brown also questions the court's logic for concluding "that because Escobar did not testify that [Brown] *had* to rent from her mother, renting from her mother could not be a reasonable accommodation for [Brown's] disabilities." *Id.* at 4 (emphasis in original). Brown also argues that Escobar "provided documentation to HCHA that [she] is disabled" and that HCHA does not contest her disability. *Id.* at 5. Finally, Brown argues that because the family-rental bar no longer applied to her, "there was no need to further prove a nexus between [her] disabilities and the reasonable accommodation of renting from her mother." *Id.* at 5.

By analyzing evidence from Escobar—namely, her initial assessment, a letter, and her testimony—the M&R determined that no fact issue existed on either the disability or reasonable accommodation prongs of Brown's discrimination claims.[3] Dkt. 95 at 25–27. Although the court disagrees with the disability prong analysis, the court agrees that no fact issue exists on the

[2]Although Brown asserts her disability began before 2013, she fails to identify when she first claimed to be disabled. Regardless, that fact did not control the M&R's analysis. It does not control the outcome here, either.

[3]Courts analyze the reasonable accommodation prongs of FHA and Rehabilitation Act claims together. *See Oxford House, Inc. v. Browning*, 266 F. Supp. 3d 896, 907 (M.D. La. 2017) (collecting cases).

reasonable accommodation prong. Without the latter, Brown's disability discrimination claims must fail.[4]

The M&R concluded that no fact issue existed on the reasonable accommodation prong. Dkt. 95 at 26. The M&R noted that Escobar's letter did not mention Brown's need to rent from her mother. *Id.* (citing Dkt. 77-3). And, the M&R concluded that, based on Escobar's testimony, Brown did not need to live in a home owned by her mother. *Id.* (citing Dkt. 77-5). Brown does not cite any evidence or authority to the contrary. Dkt. 96 at 4. Instead, she questions the court's logic. *Id.* Viewed in the light most favorable to Brown, Escobar's summary, letter, and testimony fall short of raising fact issue on the reasonable accommodation prong. *See Elderhaven, Inc. v. City of Lubbock*, 98 F.3d 175, 177 (5th Cir. 1996) (corporation failed to raise fact issue on whether city ordinance failed to reasonably accommodate disabled persons). Because Brown cannot raise a fact issue on this prong, her prima facie case fails, and so must her discrimination claims. Accordingly, the court OVERRULES the objection.

4. Retaliation

Brown challenges the M&R's determination that her retaliation claim fails because HCHA articulated a legitimate, non-discriminatory reason for denying her accommodation requests. Dkt. 96

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[4]On the disability prong, the M&R examined Escobar's initial assessment summary and letter explained that Brown suffered from anxiety and panic disorders. Dkt. 95 at 26 (citing Dkts. 77-2, 77-3). According to the M&R, Escobar testified "that [Brown] was not disabled as that term was defined by the Social Security Administration and that she was not a person with physical or mental impairments as defined by HUD, the FHA, or the Rehabilitation Act." *Id.* at 26–27 (citing Dkt. 77-5 at 16). The court agrees with that determination except for the FHA and the Rehabilitation Act:

> Q: The only box that was – that you checked was that Ms. Brown has a physical or mental impairment defined by the Fair Housing Amendments Act and Section 504 of the Rehabilitation Act, correct?
> A: Correct.

Compare Dkt. 77-5 at 16 (discussing FHA and Rehabilitation Act), *with id.* (discussing HUD regulations, Social Security Act, and Developmental Disabilities Assistance and Bill of Rights Act).

at 7. After determining that Brown met her prima facie case, the M&R explained that HCHA articulated a legitimate, non-discriminatory reason because it "repeatedly and unsuccessfully sought information from [Brown] connecting her disability to the requested accommodation of renting from her mother." Dkt. 95 at 30. Ultimately, however, she could not recover because she "fail[ed] to point to any retaliatory action or statement by an HCHA employee that would raise a fact issue that [she] was retaliated against *because* she filed a complaint of discrimination." *Id.* at 31–32. (emphasis added). Further, the M&R concluded that Brown's complaints about the August 2013 recertification meeting did not count as evidence of retaliation because "th[o]se actions pre-dated the filing of her complaint of discrimination." Dkt. 95 at 32. Brown's objection fails to point to evidence that could raise a fact issue on pretext (i.e., that Defendants' real motive was retaliation). *See* Dkt. 96 at 6. Accordingly, the court agrees with the M&R. Thus, this objection is OVERRULED.

IV. CONCLUSION

Brown's objections (Dkt. 96) are OVERRULED. The M&R (Dkt. 95) is ADOPTED IN FULL. Thus, Defendants' motion for summary judgment (Dkt. 74) is GRANTED and Brown's claims (Dkt. 1) are DISMISSED WITH PREJUDICE. The court will enter a final judgment consistent with this order.

Signed at Houston, Texas on March 12, 2018.

Gray H. Miller
United States District Judge